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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 **DONALD EVERETT CRONK,**

Petitioner,

15
16 v.

17 **ROBERT AYERS, JR., Warden,**

18
19 Respondent.

C 07-05313 TEH

**EXHIBIT 1 TO
RESPONDENT'S REQUEST
FOR STAY PENDING
ISSUANCE OF THE
MANDATE IN *HAYWARD***

Judge: The Honorable Thelton E.
Henderson

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22 **EXHIBIT 1**
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FILED

FOR PUBLICATION

MAY 16 2008

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD HAYWARD,

Petitioner - Appellant,

v.

JOHN MARSHALL, California Men's
Colony East,

Respondent - Appellee.

No. 06-55392

D.C. No. CV-05-07239-GAF(CT)

ORDER

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Ayers v. Cronk**

No.: **C 07-05313 TEH**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **June 3, 2008**, I served the attached

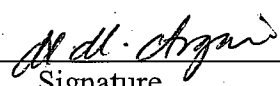
**EXHIBIT 1 IN SUPPORT OF RESPONDENT'S REQUEST FOR STAY PENDING
ISSUANCE OF THE MANDATE IN HAYWARD**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Donald Everett Cronk, C-87286
San Quentin State Prison
1 Main Street
San Quentin, CA 94964
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **June 3, 2008**, at San Francisco, California.

M.M. Argarin
Declarant


Signature